

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 25, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2691

Cir. Ct. No. 2012SC1414

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

KEVIN P. BRADLEY,

PLAINTIFF-APPELLANT,

V.

STEPHEN W. BRADLEY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
JUAN B. COLAS, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Kevin Bradley, pro se, appeals an order of the small claims court dismissing the following claims against his brother, Stephen Bradley: (1) deprivation of his common law right to have guests in his home; (2)

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a)(2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

retaliatory conduct; (3) wrongful eviction; (4) trespass; (5) false imprisonment; (6) invasion of privacy; and (7) negligent or intentional infliction of emotional distress.

¶2 This case arises out of a dispute between Kevin and Stephen over Kevin's desire to have overnight house guests at Stephen's house. For approximately three months in 2011, Kevin resided in a room located in the basement of Stephen's house. Kevin paid Stephen approximately \$400 per month for the room. In December 2011, Kevin left a note for Stephen indicating that he had invited guests for an overnight visit that upcoming weekend. The morning after Stephen discovered the note, Stephen entered Kevin's room with permission and informed Kevin, who was in bed at the time, that Stephen and his wife did not want Kevin to have overnight guests that weekend. Stephen and Kevin exchanged words and it is undisputed that Kevin eventually asked Stephen to leave his room, but that Stephen declined to do so until Kevin turned over his keys to Stephen's house. Kevin, who was not wearing anything on the lower half of his body, got out of bed and pushed Stephen out of his room and shut the door. After Kevin pushed Stephen out of the room, Stephen called the police who arrested Kevin for disorderly conduct. Stephen also asked the police to enforce a seventy-two hour no contact order against Kevin, which prevented Kevin from accessing his room during that time period.

¶3 Kevin brought suit against Stephen and the matter was tried before a jury. After Kevin's presentation of evidence, Stephen moved the court for a directed verdict. The court granted Stephen's motion. The court determined that the evidence admitted at trial was not sufficient to establish the existence of a rental agreement or a landlord/tenant relationship between Kevin and Stephen, and thus found that Kevin was Stephen's guest. The court explained:

There was testimony that there were e-mails that established this agreement, but none of those e-mails have been offered into evidence. There was testimony that the agreement was not an oral agreement, that it was entirely contained in the e-mails, but none of those have been offered in [an] admissible way into evidence. And so there's no evidence on which a jury could know what the terms of those agreements—of that agreement was, what the rules were, what the intent of the parties were, whether the parties had what we call a meeting of the minds, whether there was an offer and an acceptance, for example, with respect to certain conditions that Kevin testified about.

The testimony was that he had proposed those conditions and that he assumed because they were not rejected they were accepted, but that's not ... generally applicable principles in establishing a contract. There has to be an offer and an acceptance.

There's no evidence before the jury about the terms under which the lease could be terminated. There was conflicting testimony about whether the right to occupy the premises began on the 1st or on the 15th, how long the lease ran, whether it was subject to renewal or not.

¶4 The court then went on to conclude that Kevin failed to present sufficient evidence to support any of his claims against Stephen, and entered an order dismissing Kevin's complaint. Kevin appeals.

DISCUSSION

¶5 Kevin's brief is disjointed and difficult to follow. To the extent that he has developed any argument, Kevin challenges the small claims court's determination that he was Stephen's guest and not his tenant, as well as the court's dismissal of his invasion of privacy claim.²

² I have done my best to discern and address the arguments that were raised. However, to the extent that I have not addressed arguments raised on appeal, those arguments are deemed rejected. See *Roberts v. Manitowoc Cnty. Bd. of Adjustment*, 2006 WI App 169, ¶35, 295 Wis. 2d 522, 721 N.W.2d 499.

¶6 Kevin argues that the small claims court erred in determining that his rental of a room in Stephen's home was not governed by a rental agreement and that he was, therefore, Stephen's guest rather than his tenant. Kevin claims that their rental agreement was comprised of e-mails between him and Stephen and that those e-mail established the terms of Kevin's lease.

¶7 Where the facts are undisputed, the existence of a contract is a question of law that an appellate court reviews independently. *Kubichek v. Kotecki*, 2011 WI App 32, ¶34, 332 Wis. 2d 522, 796 N.W.2d 858. To have an enforceable contract, there must be a meeting of the minds upon all essential elements. *Laney v. Ricardo*, 169 Wis. 267, 172 N.W. 141 (1919). Whether there has been a meeting of the minds is a question of fact, which will not be overturned unless the finding was clearly erroneous. See *In re Estate of Kobylski*, 178 Wis. 2d 158, 189, 503 N.W.2d 369 (Ct. App. 1993); WIS. STAT. § 805.17(2).

¶8 The record supports the small claims court's finding that Kevin failed to establish the existence of a rental agreement between Kevin and Stephen. At trial, Kevin submitted into evidence a partially redacted email to him from Stephen wherein Stephen wrote that "September 1 would be fine to move in" and that Kevin could stay for up to four months. Stephen also wrote in the email that he had asked another individual to pay \$400 per month, but if that amount was too much for Kevin to start with, to let Stephen know what Kevin could afford. In a different e-mail from Kevin to Stephen, which is nearly entirely redacted, Kevin wrote: "Whoa whoa whoa! What's with the breach of status? We give advice to children. If I move in it must be with the understanding of 'laisse[z] faire.' Making judgment calls regarding my affairs would have to be strictly off limits please." Neither of those e-mails establishes that Kevin and Stephen had agreed on the essential terms of the lease, including the rental price and conditions of the

lease. See *Batavian Nat'l Bank of La Crosse v. S. & H. Inc.*, 3 Wis. 2d 565, 569, 89 N.W.2d 309 (1958).

¶9 Kevin also challenges the small claims court's determination that judgment should be entered in Stephen's favor with respect to Kevin's invasion of privacy claim. Ordinarily, a motion for a directed verdict based on the sufficiency of the evidence is granted only if the court is satisfied that, considering all credible evidence and reasonable inferences in the light most favorable to the opposing party, there is no credible evidence to sustain a finding in favor of the opposing party. *Weiss v. United Fire & Cas. Co.*, 197 Wis. 2d 365, 388, 541 N.W.2d 753 (1995).

¶10 WISCONSIN STAT. § 995.50(2)(a) defines "invasion of privacy" as the "[i]ntrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass."

¶11 Kevin argues that the court erred in determining that Stephen's refusal to leave his room would not be considered "highly offensive" to a reasonable person. He devotes a substantial portion of his brief to arguing about society's interests in preventing conduct like that demonstrated by Stephen when Stephen refused to leave Kevin's room. However, he has not presented this court with any persuasive arguments that a reasonable person would consider a room in which you are a guest to be "private" or a place subject to an action for trespass. Nor has he presented this court with any persuasive arguments that could lead this court to conclude that Stephen's refusal to leave the room without Kevin's keys to Stephen's house would be considered "highly offensive" to a reasonable person.

Accordingly, I reject Kevin's contention that the small claims court erred in dismissing his invasion of privacy claim.

¶12 For the reasons discussed above, I affirm the order of the small claims court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

